Regulation 39-21-108. Refunds

- (1) Limitations.
- (a) Income Tax and Wage Withholding.
- (i) The taxpayer must file any claim for refund or overpayment credit of Colorado income tax not later than one year after the expiration of the time provided for filing a claim for refund of federal income tax.
- (ii) If a tax return is filed prior to the due date of the return, then the return is considered to have been filed on the due date for purposes of the statute of limitations.
- (iii) The federal statute of limitations may be extended beyond the usual three year time frame when a payment of income tax is made after the due date. The federal statute of limitations is two years from the date of the payment of tax if this date is after the three-year statute of limitations date. Colorado extends the statute of limitations to three years from the date of last payment (the federal two-year time frame plus one year). Any refund or credit claim under this extended statute of limitations is limited to the amount of tax paid within the three-year period, not previous payments or tax issues. Estimated tax payments, wage withholding credits and refundable credits are deemed paid on the due date of the return for purposes of determining whether a refund is available under the statute of limitations.
- (iv) If there is a federal waiver of the statute of limitations, the Colorado statute of limitations is extended by the same period of time as the federal waiver.
- (v) The Colorado statute of limitations can be extended beyond the federal statute of limitations plus one year when there is a written agreement between the taxpayer and the executive director to extend the statute of limitations pursuant to §39-21-107(5), C.R.S.
- (vi) An overpayment on an income tax year closed under the statute may not be applied to a balance of tax due for another tax year open under the statute for assessment or, if the assessment was timely made, open under the statute for collection as such application would be in effect allowing a refund to be made for such closed year.
- (vii) If a refund claim is rejected in whole or in part, the appeal rights granted in Title 39 Article 21 of the Colorado Revised Statutes may be pursued upon receipt of the notice of final determination.
- (viii) The applicable due date for wage withholding returns is the due date for the annual reconciliation for that tax year.
- (b) Other Taxes.
- (i) Unless otherwise specified in statute, claims for refund of other taxes covered by Article 21 shall be filed not later than three years after the date of payment or the due date of the return, whichever is later.
- (ii) Should a dispute arise between the purchaser and the seller as to whether or not the sales tax was correctly charged, the purchaser must submit a claim for refund within sixty days after the item was purchased pursuant to §39-26-703(2), C.R.S.

- (iii) The Colorado statute of limitations can be extended when there is a written agreement between the taxpayer and the executive director to extend the statute of limitations pursuant to §39-21-107(5), C.R.S.
- (c) Tax Refunds for Exempt Use of Fuel. A claim for refund of the Colorado fuel tax paid on the fuel purchased and used in Colorado for tax exempt purposes must be submitted within twelve months after the date of purchase of the fuel pursuant to §39-27-103(3)(d), C.R.S.
- (2) Issuance of Refund. The facts relied upon in support of the claim must be clearly set forth. Warrants in payment of claims allowed by the executive director will be drawn in the names of persons entitled to the money. A claim for refund should be filed on the form provided by the executive director of the Department of Revenue. Under this section the executive director of the Department of Revenue is authorized to make a refund when the overpayment is discovered by the executive director without any action on the part of the taxpayer. In any case where the taxpayer files an application for refund, it must be accompanied by a statement of facts upon which the application is based, and if the refund is claimed because of an error in the return, the application may be accompanied by an amended return. Interest on such refunds shall be at the rate imposed under section 39-21-110.5, C.R.S.

All pertinent and relevant information requested by the return, the facts indicated by the several schedules thereof and such specific information as is essential to the final determination of the correct amount of the tax due from the taxpayer must be set forth in detail on the papers filed for consideration of a claim for a refund.

(3) Overpayment May Be Offset. An overpayment of a tax shall first be credited to any unpaid balance of tax, interest and penalty which, according to the records of the executive director, are owed by such taxpayer. Any remaining balance may be credited to an intercept due to another agency as allowed by law. Any remaining balance of overpayment of tax shall be refunded or applied to estimated tax as designated by the taxpayer.